

Appl. No. 09/766,930  
Amdt. Dated July 13, 2004  
Reply to Office action of May 3, 2004

### REMARKS/ARGUMENTS

The Examiner has indicated on page 2 of the action that the oath or declaration is defective indicating that it does not state that the person making the oath or declaration has reviewed and understands the contents of the specification including the claims, etc.

It is respectfully submitted that the original oath and declaration as filed with the application states on the second to last line "that I have reviewed and understand the contents of the above identified specification including the claims. I am sole inventor". Since this case was originally filed without a preliminary amendment it is believed that the oath and declaration is in compliance with the requirement and thus the Office is in error indicating that it is defective.

The Examiner has rejected claim 8 under 35 U.S.C. 112 concerning enablement and that the specification failed to teach how a polarized lens function as a selective color lens, etc.

Claim 8 has been amended as noted above to eliminate that conflict.

The Examiner has rejected claims 1-8 on page 3 of the action under 35 U.S.C. 112 as being indefinite concerning phraseology of "non-reactive base colors" and "respective primary colors", etc.

Applicant has amended the claims to eliminate the word "reactive" in describing "non-reactive base colors" as now being "non-primary base colors" and

"primary colors" thus avoiding the issue concerning the phraseology "reactive" and "non-reactive" which may have been less than clear in the original specification and supportive claims.

Additionally, the Examiner has indicated that it was not clear how could viewing portions, see paragraph 5, page 3, of the action, second line, are capable of imparting angular inclination of reactive graphic indicia colors imparting a wrap around effect.

Again, the claims have been amended to more specifically point out the nature of applicant's invention and to better define the association of, see claim 1 "d" as amended, "viewing portions of said composite graphic indicia from a central viewing position not in central alignment therewith imparts multiple angular inclination viewing angles to said composite graphic indicia registration portion in non-central alignment with said central viewing position".

It is respectfully submitted that such clarification by amendment to the claims is not new matter and that it better delineates the nature of applicant's claim by providing a less confusing articulation of same.

The Examiner has rejected claims 1-6 and 8 under 35 U.S.C. 103, see page 4, item 7 under the reference to Burton.

It is respectfully submitted that the claims as now amended clearly distinguish themselves over the cited reference for the following reasons.

While Burton does teach color portions which may include red, blue and green which are of the primary colors yellow portions and orange portions, the

Examiner indicates that said portions can be overlapped with each other to be formed on a black background as illustrated in figures 1-3.

After carefully reviewing the Burton reference, there is no indication that colors overlap themselves despite the Examiner's insistence on same, in fact always the colors are shown in side by side or spaced relationship to one another and even on figure 3 in which a three dimensional object has a series of colors on it, there is no indication that they overlap in fact there are specific distinguishing lines of separation between the hatching for color shown on figure 3.

Figure 4A for example illustrates the visualization of a three dimensional color shift registration to the viewer, but it is based on the colors as clearly separated in a flat planar surface shown in figure 4.

It is also important to note that Burton always talks about the colors being presented on a black background, for example, where applicant specifically claims a graphic design indicia of a non-primary base colors such as black, see claims 1 and 2 in which it is then applied, see claim 1, section b "applying a graphic design indicia of primary colors and multiple overlapping offset registration to said graphic design indicia of non-primary base colors".

The Examiner indicates that Burton does not teach explicitly that the black background and color portions are applied on a curvilinear surface indicating, however, that Burton teaches explicitly that optical three dimensional effects is a result of having different colored objects, etc. and that it is implied implicitly true that the optical three dimensional effects does not rely on the geometric shape of the background surface, but on the black color nature of the background surface,

see page 5, paragraph 1 and therefore would have been obvious to one skilled in the art to take the same method and apply it to a curved background surface.

It is respectfully submitted that such a conclusion "while obvious to one skilled in the art" cannot be based on the reference to Burton since there is no indication of Burton, as noted above, of multiple graphic design indicia of primary and non-primary colors and overlapping offset relation to one another being ever applied to a flat surface let alone a contoured curvilinear surface which by its very nature of the angle by which it is viewed from a central location imparts a unique contoured three dimensional wrap around floating effect by which is the product of the method steps of applicant's claims.

It is respectfully submitted that the Examiner's conclusion that it would be obvious to apply it on a curvilinear surface is only based on hindsight reconstruction when viewing applicant's disclosure and claims in which for the first time it is clearly set forth and claimed that viewing such multiple overlying offset graphic design indicia of primary colors and non-primary colors from a single viewing viewpoint against a curvilinear surface would impart such a unique optical illusion.

The Examiner's conclusion as far as claims 4 and 5 of the application in which he states that Burton teaches color portions or patterns may appear to have staircase relation which is "in some sense creates an angular inclination", see page 5, last paragraph, is not supported by the reference that such staircase visualization of selected colors are always within the context of adjacent color configurations and that while optically the illusion may have an overlapping effect of visualization, the actual structure by which the illusion is created is not so endowed since the

staircase effect as illustrated by the colors set forth in figure 2 of the reference shows a distinct side by side relationship.

Additionally, the Burton reference always talks about a single light source, preferably ultraviolet light in one position, see for example in figure 2, no. 30, where an applicant visualization occurs under ambient light and it is the position of the viewer relative to the curvilinear surface and the indicia thereon which effects the visualization and effect claimed.

With regard to claim 6 concerning the use of fluorescent color, applicant would agree that the Burton reference used with fluorescent color would be more intense and more sharply contrasted against a black background, but in this context applicant does not have a black background, but a graphic design indicia of a non-primary color and since claim 6 depends from claim 1 and all its limitations, it is distinct over the reference.

The Examiner has rejected claim 7 under 35 U.S.C. 103 as being unpatentable to Burton as applied to claim 1 and further in view to the Patent issued to Kawai et al, this refers to the color portions being applied by monolithic design transfer sheets of pre-printed multiple color registration. While it is respectfully submitted that such monolithic design transfer sheets are well known within the art, it is further submitted that the utilizations of such monolithic design transfer sheets of pre-printed multiple color registration on a curvilinear surface and the registration configuration so claimed and set forth by the independent claim 1 from which claim 7 depends defines its novelty in respect thereto.

Finally, the Examiner rejects claims 1-8 under 35 U.S.C. 101 as claiming the same invention of the claims 1-8 in co-pending application 10/072,328 and indicates that this is a provisional double patenting rejection since the conflicting claims have not, in fact, been patented.

Accordingly, application will reserve without prejudice the right to address the issue of double patenting if such an actual rejection is set forth if the co-pending application is allowed.

Accordingly, it is respectfully submitted that the claims as amended distinguish themselves over that of the prior art either alone or in combination with a secondary reference so cited and thus the claims are in condition for allowance and the same is respectfully requested.

Respectfully submitted,

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